

Updated Crosswalk Example

- a. The Facility property shall be used only for non-residential purposes unless the following conditions are met:
- (i) Exposed land surfaces have a permanent cover over the areas where any contaminants remain in soils from zero feet to two feet below the land surface at concentrations above EPA Region 3 residential risk screening levels or an EPA approved background level, and
 - (ii) The cover is installed in accordance with an EPA approved Soils, Cover and Cap Management Plan;
- b. All earth moving activities, including excavation, drilling and construction activities, in the areas at the Facility where any contaminants remain
- i. in soils at concentrations above EPA residential risk screening levels or an EPA approved background level, or
 - ii. in groundwater at concentrations above Federal Maximum Contaminant Levels (“MCLs”)/tap water risk screening levels or an EPA approved background level
- shall be prohibited unless it is demonstrated to EPA, in consultation with MDE, that such activity will not pose an unacceptable threat to human health or the environment or adversely affect or interfere with the selected remedy, and EPA, in consultation with MDE, provides prior written approval for such use;
- c. A vapor intrusion control system, the design of which shall be submitted to EPA for review and approval, shall be installed in any new structures which are intended for human occupation and constructed above the contaminated groundwater plume or within 100 feet of the perimeter of the contaminated groundwater plume. The vapor intrusion system shall be operated until EPA, in consultation with MDE, provides prior written approval that vapor intrusion contaminants at the Facility do not pose an unacceptable risk to human health; *(language addressing soil gas to be considered)*
- d. The facility groundwater shall not be used for any purpose other than the operation, maintenance, and monitoring activities required by EPA and/or MDE, unless it is demonstrated to EPA in consultation with MDE, that such use will not pose an unacceptable threat to human health or the environment or adversely affect or interfere with the final remedy, and EPA provides prior written approval. for such use.
- e. No new wells shall be installed on the property unless it is demonstrated to EPA in consultation with MDE, that such wells are necessary to implement the final remedy and EPA provides prior written approval to install such wells.

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Commented [pl1]: Note that this is specifically to “contaminated areas” (i.e. above Res RSL or MCL/Tap) as we cannot restrict use if they meet Res standards. This is a bit narrower than their #2, which requires notification of all construction activities.

1. General Use Restriction. The Property shall be used exclusively for nonresidential purposes. Such uses shall not interfere with any remedy or engineering control that is implemented to address environmental conditions at the Property. No part of the Property may be used by Grantee for residential (including student, staff, faculty or other housing), health care, childcare or school purposes. The restrictions set forth herein are referred to as the “General Use Restriction”. The General Use Restriction shall not prohibit the use of the Property for the following post-secondary or adult higher educational facilities (excluding residential, health care, childcare or pre-primary or K-12 school facilities) provided that the person converting the Property or portion thereof to such use shall ensure, at its cost, that the Property meets applicable environmental cleanup standards for such use established by governmental entities with jurisdiction over the Property: offices, classrooms, laboratories, science and engineering facilities, field houses, fine arts facilities, maintenance and operations facilities, power plants, and paved parking facilities. Buildings of any sort shall not be constructed on the Property without (i) assessing the potential for VOCs to migrate from the subsurface into such buildings, (ii) installing vapor barriers that are designed to and will prevent the potential migration of VOCs from the subsurface into such buildings, and (iii) taking such other steps as may be necessary to eliminate any unacceptable risks that may be posed by the potential migration of VOCs into such buildings.

Commented [pl2]: See a.

2. Pre-Construction Notification. Grantee shall notify Grantor and DII in writing prior to the commencement of construction of any buildings on the Property using the Pre-Construction Notification Form attached hereto. Grantee shall also notify the USEPA and MDE prior to such construction if and as required by law, including any notification required by the record of decision or other approval documents issued by the USEPA in connection with the RCRA corrective action matter. The notices required by this Paragraph 2 are referred to collectively as the “Pre-Construction Notification.”

Commented [pl3]: See c

3. Groundwater Use Restriction. No water supply wells of any kind (including, without limitation, water supply wells used to provide water for drinking, bathing or other human consumption purposes and water wells used to provide water for livestock, farming or irrigation) shall be installed or used on the Property (collectively, the “Groundwater Use Restriction”); provided, however, that the Groundwater Use Restriction shall not prohibit the installation or use of any compliance wells or any groundwater monitoring, recovery or extraction wells or similar devices used for or related to the performance of any remediation or environmental corrective action work on the Property, now or in the future.

Commented [pl4]: See b.

Commented [pl5]: See d

Commented [pl6]: See e